

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNIVERSITY OF PITTSBURGH

Plaintiff,

v.

VARIAN MEDICAL SYSTEMS, INC.,

Defendant.

Case 2:07-cv-00491-AJS

Judge Arthur J. Schwab

**Electronically Filed**

**MOTION FOR SANCTIONS PURSUANT TO RULE 11 OF THE  
FEDERAL RULES OF CIVIL PROCEDURE AND/OR 35 U.S.C. § 285**

Defendant Varian Medical Systems, Inc. (“Varian”) moves this Court to grant its Motion for Sanctions Pursuant to Rule 11 of the Federal Rules of Civil Procedure and/or 35 U.S.C. § 285. As set forth in greater detail in the accompanying memorandum, Plaintiff University of Pittsburgh (“UPitt”) and its counsel, Morgan, Lewis & Bockius LLP (“MLB”), should have known at the time of filing UPitt’s Complaint, and if not prior to filing the Complaint then at a later time as discovery progressed and motions were filed, that the allegations in the Complaint regarding UPitt’s ownership and Varian’s infringement of United States Patent Nos. 5,727,554 and 5,784,431 were unwarranted by existing law or by a non-frivolous argument for the extension, modification or reversal of existing law or the establishment of new law, and they had no evidentiary support, in violation of Rule 11(b)(2) and (b)(3). In addition, UPitt and MLB filed and pursued the Complaint and other papers in this action for improper purposes in violation of Rule 11(b)(1), namely to impose expense and burden on Varian in the hopes of pressuring Varian into agreeing to an unwarranted license with respect to the patents-in-suit, and for other purposes of delay, obfuscation, and harassment.

In compliance with Rule 11(c)(1)(A), Varian served UPitt and MLB with a copy of Varian's motion papers at least twenty-one (21) days prior to filing them.

For the reasons set forth herein and in the accompanying papers, Varian respectfully requests that this Honorable Court grant its Motion for Sanctions Pursuant to Rule 11 of the Federal Rules of Civil Procedure and/or 35 U.S.C. § 285. A proposed Order of Court is attached.

Dated: January 16, 2008

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the **MOTION FOR SANCTIONS PURSUANT TO RULE 11 OF THE FEDERAL RULES OF CIVIL PROCEDURE AND/OR 35 U.S.C. § 285** was served upon the University of Pittsburgh and Morgan Lewis & Bockius, LLP either individually or through counsel via:

<u>      X      </u>	Hand-Delivery
<u>          </u>	Facsimile
<u>          </u>	First Class, US Mail, Postage Prepaid
<u>          </u>	Certified Mail-Return Receipt Requested
<u>          </u>	ECF Electronic Service
<u>          </u>	Overnight Delivery

at the following addresses:

Rita E. Tautkus  
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Dated: January 16, 2008

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the **MOTION FOR SANCTIONS PURSUANT TO RULE 11 OF THE FEDERAL RULES OF CIVIL PROCEDURE AND/OR 35 U.S.C. § 285** was served upon the University of Pittsburgh and Morgan Lewis & Bockius, LLP either individually or through counsel via:

_____	Hand-Delivery
_____	Facsimile
_____	First Class, US Mail, Postage Prepaid
_____	Certified Mail-Return Receipt Requested
<u>  X  </u>	ECF Electronic Service
_____	Overnight Delivery

at the following addresses:

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Dated: March 20, 2008

/s/Matthew H. Poppe

Matthew H. Poppe